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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

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Foreign Corporations—Collection of Use Taxes

On May 15, 1944, the Supreme Court of the United States held, in *General Trading Company v. State Tax Commission of Iowa*, Docket No. 441, that a foreign corporation, not licensed in Iowa, which merely had traveling salesmen soliciting orders there, approved in another state, followed by shipment of the goods ordered into Iowa in interstate commerce, could be required to collect and remit the Iowa use tax imposed on the use, in that state, of tangible personal property which was not subject to the sales tax.¹ This ruling affirmed a decision of the Supreme Court of Iowa to the same general effect.²

Prior to this decision of the highest court, it had been generally assumed that a state did not have jurisdiction over a foreign corporation under circumstances where its only activity with respect to the state was the presence of solicitors whose only authority was limited to the mere solicitation of orders within the

state, followed by their approval elsewhere, and the shipment of the goods ordered into the state in interstate commerce.³

The Supreme Court of the United States had previously held that an unlicensed foreign corporation engaged in interstate commerce, having *general sales agents with offices rented by it* in a state imposing a use tax, could be required to collect the use tax⁴ and that the maintenance of a *place of business* in a state by a qualified foreign corporation would give rise to similar liability to collect the use tax.⁵

The *General Trading Company* decision extends the collection of the use tax to an unlicensed foreign corporation engaged in interstate commerce which merely solicits orders in a state through *traveling salesmen*. The ruling holds, in effect, as pointed out in the dissenting opinion by Justice Jackson, "that a state has power to make a tax collector of one whom it has no power to tax."⁶

¹ 64 S. Ct. 1028, 1030. "The exaction," concluded the court, "is made against the ultimate consumer—the Iowa resident who is paying taxes to sustain his own State Government. To make the distributor the tax collector for the State is a familiar and sanctioned device."

² *State Tax Commission v. General Trading Company*, 10 N. W. 2d 659. (The Corporation Journal, October, 1943, page 18.)

³ *People's Tobacco Co. v. American Tobacco Co.*, 246 U. S. 79. However, in at least two states, official rulings rendered prior to the *General Trading Company* case indicated that the use tax was to be collected and reported where the activities of the seller within the state were limited to solicitation of orders by salesmen. These states were Colorado, North Carolina. (Colorado CT, §§ 58-802 and North Carolina CT, §§ 63-025.032.) Wyoming has since adopted a similar ruling. (Wyoming CT, §§ 7949.)

⁴ *Felt and Tarrant Mfg. Co. v. Gallagher et al.*, 306 U. S. 62.

⁵ *Nelson et al. v. Sears, Roebuck and Co.*, 61 S. Ct. 586, 312 U. S. 359, rehearing denied, 61 S. Ct. 803, 312 U. S. 715, and *Nelson et al. v. Montgomery Ward & Co.*, 61 S. Ct. 593, 312 U. S. 373, rehearing denied, 61 S. Ct. 804, 312 U. S. 716.

⁶ See page 212 for a digest of *McLeod v. J. E. Dilworth Company et al.*, 64 S. Ct. 1023, 1030, holding that the Arkansas gross receipts tax was not applicable to an unlicensed foreign corporation soliciting orders in Arkansas through traveling representatives, followed by interstate shipments. See also page 214 for a further discussion of the *General Trading Company* case.

Domestic Corporations

Connecticut.

Relief granted minority stockholder where partial transfer of assets to another corporation was proposed and defendant directors held voting control of transferor's stock. Plaintiff, a minority stockholder in a Connecticut company, one of the defendants, sought an injunction to restrain the conveyance of a part of the assets of that corporation to another Connecticut company, incorporated by the plaintiff's company, in exchange for stock, or in the alternative to obtain a judgment that he be paid the value of his stock. The proposed transfer was found not to come within the provisions of Secs. 3384 and 3385 of the General Statutes, governing the sale of all of a corporation's property and assets, as the transfer did not constitute such an integral part of the company's business as to be essential to it. The Supreme Court of Errors of Connecticut remarked that aside from the statute the plaintiff had no right to prevent the transfer. As no fundamental change in the legal plan and scope of plaintiff's corporation's business was involved, the assent of all of the stockholders was not required. The trial court held that the consideration received was fair and adequate. The higher court, however, found the proposal inequitable as to the plaintiff, stressing that three of the defendants constituted a majority of the directors of the plaintiff's company and that they owned a majority of the common stock, which alone had voting power. It regarded certain provisions of the certificate of incorporation of that corporation as appearing to represent "a studied effort on the part of the defendant directors to forestall objection by the plaintiff as a minority stockholder to any acts which those who constitute a majority of the board of directors and who own a majority of the stock of the company may see fit to adopt, no matter how far his interests in the business may be subordinated to theirs," and as giving the defendant directors control of the portion of the business to be transferred to the other corporation. Without indicating the specific relief to be granted, the trial court was held to be in error in denying plaintiff relief and its judgment was set aside and a new trial ordered. *Klopot v. Northrup et al.*, 37 A. 2d 700. Curtiss K. Thompson of New Haven, for appellant (plaintiff). Frank E. Callahan of New Haven, for appellees (defendants).

Delaware.

Issuance of entire no par stock in exchange for unconditional right to use certain patents, upheld. In a representative suit by complainant preferred shareholders on behalf of their corporation, cancellation of the entire no par common stock issue was sought. A question raised concerned the application of a portion of the certificate of incorporation reading: "The stock of the corporation may be issued by the corporation from time to time for such consideration

as may be fixed from time to time by the Board of Directors thereof, and such action of the Board of Directors shall be accepted as conclusive and binding as to the adequacy of such consideration." Noting that no abuse of discretion appeared, the Court of Chancery of Delaware remarked that, in the absence of a clear abuse of discretion by the Board of Directors, the amount of the consideration received for a no par common stock issue is usually of no moment, provided its quality is such as to meet the constitutional requirements. "Apparently," continued the court, "the complainants do not deny that an unconditional license to use a patent right is property within the meaning of Section 3 of Article IX of the Constitution, and that, ordinarily, corporate stock may be issued therefor." Complainants contended, however, that a contract, granting to the corporation the right to use certain patents, and in consideration of which its entire no par common stock was issued, was subject to certain terms and conditions, and that the defendants' supporting answers were defective because they did not allege full performance thereof. The court, however, ruled in favor of the defendants on this point, observing that "the license to use the patent rights was definitely granted to the corporation, and no forfeiture by failure to perform its part of the agreement could take effect until at least six months thereafter. The mere fact that the corporation may be required to expend money to protect its interests in property rights acquired, and for which it has issued stock, does not, necessarily, render the consideration invalid. The fact that the defendant corporation 'has not at any time engaged in manufacturing or conducting laboratories on a commercial basis,' as alleged in the bill, is, therefore, unimportant in determining the complainants' rights." *West et al. v. Sirian Lamp Co. et al.*, 37 A. 2d 835. Hugh M. Morris of Morris, Steel & Nichols of Wilmington, for complainants. Howard & Duane, Harry Rubenstein and Warren Roberts of Wilmington (William Bohleber and William Helfer of New York City, of counsel) for appearing defendants.

Service on resident agent of dissolved Delaware company, effected within three years of its dissolution, set aside; Secretary of State's capacity to accept such service indicated. Several days prior to the expiration of three years from the date of the dissolution of defendant Delaware company on September 30, 1940, service of summons in a Federal court action was made upon the defendant's resident agent. The corporation moved to set aside the service. The United States District Court, District of Delaware, posed this question: "Generally, is service of process on a resident agent of a dissolved Delaware corporation invalid for the reason that the resident agent's power to accept such service is terminated by the dissolution?" After a discussion of pertinent Delaware law and decisions, the court concluded that while the action was one which could be maintained, the motion to quash the service should be granted, as the agency relationship between the corporation, as principal, and its local resident agent, as agent, had ceased upon the dissolution, and

the latter was no longer possessed of powers to act for the principal. The court indicated that under the Federal Rules of Civil Procedure, proper service in this action could be effected upon the Secretary of State, observing: "The Secretary of State's capacity to accept service on behalf of a dissolved corporation is one of the conditions upon which a Delaware corporation pursues its right to do business under a Delaware charter." *International Pulp Equipment Co., Ltd. v. St. Regis Kraft Co.*, 54 F. Supp. 745. W. Reese Hitchens of Hering, Morris, James & Hitchens of Wilmington, and Frank J. Dillon of Dillon, O'Brien & Clark of New York City, for plaintiff. C. A. Southerland of Southerland, Berl & Potter of Wilmington, and Horace H. Lamb of LeBoeuf & Lamb of New York City, for defendant. (*Companion case at* 55 F. Supp. 860.)

Sec. 61, G. C. L., as amended in 1943, construed. *In the Matter of Universal Pictures Company, Inc.*, decided May 17, 1944, the Court of Chancery, New Castle County, had its first occasion to pass upon Sec. 61 of the Delaware Corporation Law, as amended in 1943, relating to the payment for stock of dissatisfied stockholders of merging or consolidating corporations. The court ruled with regard to the following situations: (1) The proceeding was dismissed as to claimants who had not proved the making of written objections to the merger which was before the court and of written demands for payment. (2) The proceeding was also dismissed as to persons claiming payment who were not registered stockholders and who failed by their objection or otherwise to notify the corporation of the names of the registered holders of the shares with respect to which the objections were made. (3) The proceeding was upheld as to certain persons, not included in the two classes mentioned, whose stock and voting trust certificates were held in margin accounts with brokers, registered in the names of brokers, although no certificates were segregated for any of the claimants, prior to the time of the hearing, the court concluding that "the term 'stockholder,' as used in the statute, should be held to embrace a margin customer; and an objection and demand filed by a margin customer should not be deemed improper because the broker did not join in them." (4) As to objections and demands which were signed by purported agents rather than by security holders personally, the court made the observation, generally, that, under such circumstances, "It would seem manifestly unreasonable to require consenting stockholders, or the corporation, to assume the existence of an agency and take action upon that assumption." The court, however, ruled valid objections made by brokers who were registered holders of shares and who stated in their written objections that these were made on behalf of a client, whom they named. (5) As to persons claiming to be stockholders, who were not the registered holders, but who stated the names of the registered holders in their objections, the court applied the rule in *Schenck v. Salt Dome Oil Co.*, 34 A. 2d 249, (The Corporation Journal, December, 1943, page 54), holding that unregistered transferees, the "real" owners of shares and of

certificates endorsed for transfer, were "stockholders" within the meaning of the section and entitled to proceed to obtain an appraisal and payment of their shares. (6) A person objecting and demanding payment was upheld, where he was a record holder at the time of the hearing, although he offered no proof to show he was at the time his objection was filed. *In re Universal Pictures Company, Inc.*, 37 A. 2d 615. Hugh M. Morris and Edwin D. Steel, Jr., of Morris, Steel & Nichols of Wilmington, for petitioner. Stewart Lynch of Wilmington and Joseph Nemorov and Louis W. Vyner of New York City, for claimants. Commerce Clearing House Court Decisions Requisition No. 322556.

State Supreme Court affirms Chancery Court decree dismissing bill of non-assenting stockholder filed three years after amendment and reorganization plan became effective. In *Bay Newfoundland Co., Ltd. v. Wilson & Co., Inc.*, 28 A. 2d 157, (The Corporation Journal, November, 1942, page 247), the complainant filed its bill challenging the validity against it as a non-assenting stockholder, of a plan of recapitalization of the defendant company. The bill was not filed, however, until three years after an amendment, giving effect to the plan, had been approved by a large majority of the stockholders. The Chancellor, after an examination of the evidence, ruled that the claim was barred by laches and dismissed the bill. Upon appeal, the Supreme Court of Delaware has affirmed the decree of the Chancery Court. The higher court regarded the complainant as under duty to the corporation and the stockholders to make known its dissent at a time when its objection might have had effect. "Having elected the course of silence and inaction when it was its duty to speak or to act, equity will now withhold its aid. It is, we think," concluded the court, "within the doctrine of acquiescence to hold that assent to a proposed corporate act will be inferred in a case where a stockholder, with full knowledge of an intended invasion of his rights and an opportunity to dissent, stands by during the progress of a proceeding which, although unauthorized, is ratifiable, and allows, without objection, his stock to be dealt with in a manner inconsistent with his rights of ownership." *Bay Newfoundland Co., Ltd. v. Wilson & Co., Inc.*, 37 A. 2d 59. James R. Morford of Wilmington (Beekman, Bogue, Stephens & Black of New York City, of counsel), for appellant. Aaron Finger of Richards, Layton & Finger of Wilmington, for appellee.

New York.

By-law requiring unanimous vote of stockholders to amend by-laws, sustained. In connection with the decision of the New York Supreme Court, Special Term, New York County, in *Benintendi et al. v. Kenton Hotel, Inc. et al.*, 45 N. Y. S. 2d 705, (The Corporation Journal, June, 1944, page 184), attention is called to the fact that the court, in construing an amendment to the by-laws of defendant company providing that the by-laws might be amended only by unanimous vote of the stockholders, (item "(4)"), held: "The by-law

requiring a unanimous vote of stockholders for an amendment of the by-laws is also upheld as not being inconsistent with law."

Sec. 61-b, Gen. Corp. Law, permitting corporate defendant to require plaintiffs in derivative suit to give security for expenses under certain circumstances related to amount of stock held, ruled constitutional. Plaintiff stockholders, instituting this derivative stockholders' action, together owned only 35 shares of the common stock of defendant corporation out of a total of 2,530,000 outstanding shares of common and 250,000 outstanding shares of preferred stock. Defendant invoked the provisions of Ch. 668, Laws of 1944, which added Sec. 61-b to the General Corporation Law, seeking an order directing plaintiffs, pursuant to that section, to give defendant security for the reasonable expenses, including attorneys' fees, which might be incurred by defendants in connection with the suit. The current market value of plaintiffs' shares was less than \$2,000, whereas the statute mentioned requires stockholders instituting or maintaining a derivative suit who hold less than 5% of outstanding shares of any class of the corporate stock, unless the shares have a market value in excess of \$50,000, to give, upon corporate demand, security for reasonable expenses, including attorneys' fees. Resisting defendant's application for such an order, plaintiff contended that both Sec. 61-b and Sec. 61-a were unconstitutional. The New York Supreme Court, New York County, Special Term, Part I, after an exhaustive examination into the history of Sec. 61-b, concluded that it was constitutional and noted that Sec. 61-a had previously been held valid by this court. *Shielcrawt et al. v. Moffett et al.*, New York Supreme Court, New York County, Special Term, Part I, May 16, 1944. Oscar Schleiff for plaintiffs (I. Gainsburg and Samuel Gottlieb, of counsel). Lord, Day & Lord for individual defendants (T. F. Daly, Sherman Baldwin and Joyce Stanley, of counsel). Samuel A. McCain for Corn Products Refining Company (Walter A. Dane, of counsel). Commerce Clearing House Court Decisions Requisition No. 332573; 49 N. Y. S. 2d 64.

Foreign Corporations

Mississippi.

Law providing for substituted service against non-residents in civil suits for damages, upheld. The United States Circuit Court of Appeals, Fifth Circuit, has upheld the validity of Ch. 246, Laws of Mississippi, 1940. This statute provides that the Secretary of State shall be deemed to be agent for the service of process of a non-resident person, firm or partnership, or of a non-resident corporation which has not designated a resident process agent, in civil actions for the recovery of damages brought against the non-resident. It places the venue in the county in Mississippi in which the action accrued. Provision is made in the law for the forwarding of a copy of the summons by the Secretary of State to the non-resident. The Court, after an examination of the statute, concluded that it did not

deny the defendant, an individual, the equal protection of the law, due process, nor deny him any privileges and immunities afforded to a resident of the state. Further, interstate commerce was not burdened in this instance because defendant was not engaged in interstate commerce, having been found to be engaged in intrastate business. *Sugg v. Hendrix*, 142 F. 2d 740. Ross R. Barnett of Jackson, for appellant. Edward C. Brewer of Clarksdale, for appellee.

New York.

Suit relative to coupon detached from foreign corporation's bond held properly brought in New York, where mortgage and bonds, both principal and interest, were payable there. Plaintiff instituted suit on a coupon for \$25, once part of a coupon-bearer bond issued by the defendant New Jersey corporation. Defendant was organized under special provision of the laws of New Jersey for the purpose of constructing and operating a public-service railroad in Cuba. The bond had been issued and delivered in 1902, payable with interest at defendant's office or agency in New York City. Plaintiff alleged a demand upon defendant in New York City and that payment of the coupon, due January 1, 1941, was refused. Defendant denied that the \$25 was due. It contended no recovery could be had except under the Cuba law in a designated Havana court and that the Cuba law only was applicable to the bond and coupon. The Municipal Court of the City of New York, Borough of Manhattan, Ninth District, directed judgment in favor of plaintiff for the amount demanded, pointing out that the mortgage was made in New York and that the bonds, both principal and interest, were payable in New York, and that the action was brought in New York where plaintiff had a right to bring it. Further, there was nothing in the laws of Cuba which operated to confine the rights of the obligee's remedy upon his coupon to the courts of Cuba, as Cuba's laws have no extra-territorial effect. *Myles v. Cuba Railroad Co.*, 48 N. Y. S. 2d 148. Louis C. Haggerty of New York City, for plaintiff. White & Case (Orison S. Marden, of counsel), of New York City, for defendant.

Oklahoma.

Unlicensed foreign corporation, engaged in interstate commerce, held empowered to sue on such transactions in the state courts. Plaintiff below, an unlicensed foreign corporation, entered into an agreement with the defendant below whereby the defendant was to be exclusive distributor in Oklahoma County and certain adjacent territory for plaintiff corporation's products. Plaintiff did not maintain a warehouse or place of business in Oklahoma, owned no merchandise in storage there and made no sales other than an open account to defendant. It shipped the merchandise from Wisconsin in interstate commerce to Oklahoma. Defendant urged that plaintiff was transacting business in the state and could not maintain suit in the courts of Oklahoma under the Oklahoma statutes prohibiting

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a foreign corporation to transact business without becoming domesticated for such purpose. The Supreme Court of Oklahoma, however, affirmed a judgment for the plaintiff below, remarking that the "prohibitions against the maintenance of litigation do not apply where the transaction of business by an undomesticated foreign corporation constitutes interstate commerce or is a mere incident thereof." *Sooner Beverage Co. et al. v. G. Heileman Brewing Co.*,* 150 P. 2d 72. Keaton, Wells & Johnston of Oklahoma City, for plaintiffs in error. A. K. Little of Oklahoma City, for defendant in error. Commerce Clearing House Court Decisions Requisition No. 324204.

* The full text of this opinion is printed in **The Corporation Tax Service**, Oklahoma, page 516.

Taxation

Arkansas.

Supreme Court of the United States affirms State Supreme Court holding that Arkansas gross receipts tax was not applicable to unlicensed foreign corporation soliciting orders through traveling representatives, followed by interstate shipments. The Supreme Court of Arkansas, in *McLeod, Commissioner of Revenues, v. J. E. Dilworth Company et al.*, 171 S. W. 2d 62, (The Corporation Journal, October, 1943, page 16), ruled that the Arkansas gross receipts tax was not applicable where there was merely solicitation within the state by traveling representatives of an unlicensed Tennessee corporation which had no office in the state, followed, after approval of orders in Tennessee, by shipment of the goods into the state in interstate commerce. Upon appeal, the Supreme Court of the United States has affirmed this decision. The court distinguished its decision in *McGoldrick v. Berwind-White Co.*, 309 U. S. 33, (The Corporation Journal, March, 1940, page 135), observing: "In *Berwind-White* the Pennsylvania seller completed his sales in New York; and in this case the Tennessee seller was through selling in Tennessee. We would have to destroy both business and legal notions to deny that under these circumstances the sale—the transfer of ownership—was made in Tennessee. For Arkansas to impose a tax on such transactions would be to project its powers beyond its boundaries and to tax an interstate transaction." *McLeod v. J. E. Dilworth Company et al.*,* 64 S. Ct. 1023, 1030. Leffel Gentry of Little Rock, for petitioner. J. Fred Brown of Memphis, Tenn., for respondent J. E. Dilworth Co. William H. Daggett of Marianna, Ark., for respondent Reichman-Crosby Co.

* The full text of this opinion is printed in **The Corporation Tax Service**, Arkansas, page 7803.

California.

Income Tax ruled payable by unlicensed foreign corporation with salesmen operating from offices in state, soliciting orders in inter-

state commerce, who also effected collections and adjustments of complaints of local customers. In *West Publishing Co. v. Superior Court et al.*, 20 Cal. 2d 720, 128 P. 2d 777, (The Corporation Journal, December, 1942, page 277), certiorari denied by the Supreme Court of the United States, 63 S. Ct. 524, the California Supreme Court held that an unlicensed foreign corporation, with salesmen operating from offices in California, who obtained orders subject to acceptance in Minnesota, from which shipments were then made by carrier to the California customers and who also effected collections and adjustments of complaints of customers there, was subject to service of process in an action by the state for the recovery of use taxes. In the present action, involving the same facts, and concerned with the liability of the company to the payment of the California Corporation Income Tax by this unlicensed company, the California Superior Court, Sacramento County, held that the corporation was subject to the Income Tax under such circumstances. The court stressed the fact that there were activities considerably beyond the mere solicitation of orders. It noted a trend in the opinions of the Supreme Court of the United States showing a relaxing of the older rule of immunization of interstate commerce from state taxation. "The tax here involved," said the court, "at most is an indirect burden." "On principles the non-resident corporation should pay its proportionate share of the State tax burdens; otherwise a discrimination exists in its favor and against intrastate commerce, and there results an undue restriction upon the power of the state to tax. So long as interstate commerce is not discriminated against, it ought to pay for the protection it receives as local commerce is obliged to pay. This is the tenor of the later decisions of the higher court." An arbitrary assessment, made because the corporation, upon demand, either failed or refused to file a return, was sustained. "The burden," concluded the court, "is not upon the defendant (the commissioner) to show that the tax is correctly determined; rather the burden is upon the plaintiff (the taxpayer) to show that he is entitled to recover." *West Publishing Company v. McColgan*,* California Superior Court, Sacramento County, March 2, 1944. Commerce Clearing House Court Decisions Requisition No. 322653.

* The full text of this opinion is printed in **The Corporation Tax Service**, California, page 1601.

Illinois.

Sec. 1b of Retailers' Occupation Tax Act held invalid by County Court. Sec. 1b, added to the Retailers' Occupation Tax Act by Senate Bill No. 512 of 1943, which broadened the scope of the Act to include sales effected through the solicitation of orders by salesmen in Illinois, notwithstanding that orders were not accepted in Illinois or that the property was not in the state at the time of sale or that ownership of or title to the property was not transferred in the state to the purchaser, has been held unconstitutional by the Circuit Court of Sangamon County. The court, without detailing

the types of sales before it, found them identical with those in the cases of *Allis-Chalmers Mfg. Co. v. Wright*, 383 Ill. 363, 50 N. E. 2d 508, *Ex-Cell-O Corp. v. McKibbin et al.*, 383 Ill. 316, 50 N. E. 2d 505, *Ayrshire-Patoka Collieries Corp. v. Nudelman and Knox Consolidated Coal Corp. v. Nudelman et al.*, 383 Ill. 345, 50 N. E. 2d 509, (The Corporation Journal, October, 1943, page 17), and found sufficient reason for the invalidity of the section under these decisions, which held the Retailers' Occupation Tax Act, as it existed prior to the addition of Sec. 1b, to be inapplicable to the mere solicitation of orders in the state, whether through manufacturers' agents, sales agents, employees or soliciting offices in the state, where such solicitation was the only activity within the state. *Ex-Cell-O Corporation v. Collins*,* Circuit Court of Sangamon County, June 21, 1944. Commerce Clearing House Court Decisions Requisition No. 324612.

* The full text of this opinion is printed in **The Corporation Tax Service**, Illinois, page 6501.

Iowa.

Supreme Court of the United States affirms State Supreme Court ruling holding use tax applicable to unlicensed foreign corporation merely soliciting orders in state through traveling salesmen, followed by shipment of goods into state in interstate commerce. The Iowa Supreme Court, in *State Tax Commission v. General Trading Company*, 10 N. W. 2d 659, (The Corporation Journal, October, 1943, page 18), held that an unlicensed foreign corporation, merely soliciting orders in Iowa through traveling salesmen, followed by shipment of goods into Iowa in interstate commerce could be required to collect the Iowa use tax. Upon appeal, the Supreme Court of the United States has affirmed this ruling, emphasizing that "the exaction is made against the ultimate consumer—the Iowa resident who is paying taxes to sustain his own State Government. To make the distributor the tax collector for the State is a familiar and sanctioned device." *General Trading Company v. State Tax Commission*,* 64 S. Ct. 1028, 1030. Edward S. Stringer of St. Paul, Minn., for petitioner. Jens Grothe of Des Moines, Ia., for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, Iowa, page 6263.

Minnesota.

Supreme Court of the United States affirms State Supreme Court ruling that entire fleet of airplanes, used principally in interstate commerce, was taxable in Minnesota for property tax purposes. The Minnesota Supreme Court, in *State of Minnesota v. Northwest Airlines, Inc.*, 7 N. W. 2d 619, (The Corporation Journal, March, 1943, page 351), held that an entire fleet of airplanes, used principally in interstate commerce by a Minnesota airline corporation, with its principal place of business in that state, was taxable in Minnesota

for property tax purposes. Upon appeal, the Supreme Court of the United States has affirmed this holding, stress being laid upon the fact that no part of the property received permanent protection from any other state during the year and that it was the state of domicile which was imposing the tax. *Northwest Airlines, Inc. v. State of Minnesota*,* 64 S. Ct. 950. Michael J. Doherty of St. Paul, for petitioner. Andrew R. Bratter and George B. Sjöselius of St. Paul, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, Minnesota, page 2766.

Wisconsin.

Ruling that privilege dividend tax, being a tax upon the stockholder and not upon the corporation, is not deductible by the corporation in computing its Federal income tax, affirmed by the Supreme Court of the United States. In *Wisconsin Gas and Electric Company v. United States*, 138 F. 2d 597, (The Corporation Journal, January, 1944, page 88), the United States Circuit Court of Appeals, Seventh Circuit, applied rulings in decisions of the Wisconsin Supreme Court in arriving at the conclusion that the Wisconsin privilege dividend tax was a tax upon the stockholder and not upon the corporation declaring the dividend, and therefore the tax was not deductible by the corporation in computing its Federal income tax. Upon appeal, the Supreme Court of the United States has affirmed the judgment of the Circuit Court of Appeals in an opinion written by Justice Rutledge. The petitioner's claim for refund was based upon Secs. 23(c) and 23(d) of the Revenue Act of 1934. Noting that the relevant Treasury Regulation concerned with Sec. 23(c) includes among "taxes paid" those imposed by any State and provides that "In general taxes are deductible only by the person upon whom they are imposed," the court concluded that the tax was not "imposed" upon the petitioner corporation and was therefore not deductible under this subsection. The court also indicated that the petitioner could not prevail under Sec. 23(d), remarking: "To pay the tax with sums which have been deducted and withheld from dividends declared and distributed amounts to obtaining the reimbursement which renders the deduction unavailable." *Wisconsin Gas and Electric Company v. United States*,* 64 S. Ct. 1106. Van B. Wake of Milwaukee, for petitioner. Samuel O. Clark, Jr., Asst. Atty. General, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, Wisconsin, page 1987-6.

Referring to the names of counsel for the parties to *Robinson v. Coos Bay Pulp Corp.*, as shown in The Corporation Journal for June, 1944, page 187, we are informed that a change has since been effected in the court records whereby Isaac Grossman of Philadelphia now appears to have been counsel for the plaintiff and Morgan, Lewis & Bockius, A. Allen Woodruff and John N. Schaeffer of Philadelphia are now indicated as having been counsel for the defendant, whose motion to vacate and set aside the service of summons and complaint was granted.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

October 1943 Term

ARKANSAS. Docket No. 311. *McLeod, Commissioner of Revenues v. J. E. Dilworth Company et al.*, 171 S. W. 2d 62. (The Corporation Journal, October, 1943, page 16.) Gross receipts tax—solicitation by traveling representatives, followed by shipment into state in interstate commerce. Petition for writ of certiorari filed, August 31, 1943. Certiorari granted, October 25, 1943. Argued, February 4, 1944. Affirmed, May 15, 1944. (See page 212.)

IOWA. Docket No. 441. *State Tax Commission v. General Trading Company*, 10 N. W. 2d 659. (The Corporation Journal, October, 1943, page 18.) Liability of unlicensed foreign corporation to collection of Iowa use tax on orders solicited by traveling salesmen in state, approved in another state, from which goods were shipped in interstate commerce into Iowa. Petition for certiorari filed, October 19, 1943. Certiorari granted, November 22, 1943. Argued, February 4, 1944. Affirmed, May 15, 1944. (See pages 203 and 214.)

MINNESOTA. Docket No. 33. *Northwest Airlines, Inc. v. State of Minnesota*, 7 N. W. 2d 691. (The Corporation Journal, March, 1943, page 351.) State taxation—assessment of Minnesota personal property tax against entire fleet of airplanes operated by Minnesota corporation in interstate commerce. Petition for certiorari filed, April 2, 1943. Certiorari granted, May 10, 1943. Argued, October 19 and 20, 1943. Affirmed, May 15, 1944. (See page 214.)

OKLAHOMA. Docket No. 942. *Rock Island Refining Co. v. Oklahoma Tax Commission*, 145 P. 2d 194. (The Corporation Journal, May, 1944, page 173.) Oklahoma Income Tax—apportionment of earnings. Appeal filed, April 28, 1944. Appeal dismissed for want of a substantial Federal question, May 22, 1944. Petition for rehearing denied, June 12, 1944.

WISCONSIN. Docket No. 565. *Wisconsin Gas and Electric Company v. The United States of America*, 138 F. 2d 597. (The Corporation Journal, January, 1944, page 88.) Federal income tax—right of public utility corporation to deduct privilege dividend tax paid to the State of Wisconsin. Appeal filed, December 30, 1943. Certiorari granted, January 31, 1944. Argued, March 10, 1944. Affirmed, May 29, 1944. (See page 215.)

October 1944 Term

CONNECTICUT. Docket No. 62. *Spector Motor Service, Inc. v. Walsh*, 139 F. 2d 809. (The Corporation Journal, March, 1944, page 128.) Connecticut Corporation Business Tax Act—application to interstate motor carrier. Petition filed, April 18, 1944. Certiorari granted, May 22, 1944.

GEORGIA. Docket No. 23. *Davis et al. v. Smith et al.*, 28 S. E. 2d 148. (The Corporation Journal, April, 1944, page 153.) Property taxes—taxability of open account owed by United States for construction work. Petition for certiorari filed, February 8, 1944. Certiorari granted, April 3, 1944.

OHIO. Docket No. 38. *The Hooven & Allison Company v. Evatt*, 51 N. E. 2d 723. (The Corporation Journal, February, 1944, page 111.) Ohio general property tax levied against goods grown in foreign country and transshipped by seller's agent from port of entry to buyer in Ohio. Petition for certiorari filed, March 11, 1944. Certiorari granted, April 10, 1944.

* Data compiled from CCH U. S. Supreme Court Service, 1944-1945.

Regulations and Rulings

ALABAMA—An Alabama corporation must pay the fees prescribed by law upon increase of its capital stock, even though prior to the proceedings to increase its stock it may have merged with other corporations and paid the fees which are required upon consolidation or merger. (Opinion of Attorney General, Alabama Corporation Tax (CT) Service, ¶ 404.)

CALIFORNIA—The minimum initial franchise tax and the minimum annual franchise tax are each \$21.25 for taxable years beginning after December 31, 1943 and before January 1, 1946. (Opinion, Attorney General to Secretary of State, California CT, ¶¶ .0453 and 5-914.02.)

GENERAL—Where it is desired to effect, before the end of the calendar year, either the withdrawal of a foreign corporation from a state in which it has been authorized to do business or the dissolution of a domestic corporation, counsel have usually found that it is advisable to initiate the dissolution or withdrawal proceedings in most states as early as possible. Thus, if there are time-consuming requirements with which compliance must be had, ample provision may be made to satisfy such requirements before the end of the year. Frequently such requirements call for the preparation of income and other tax reports, the auditing of the corporate books, or the obtaining of certificates from various state departments that all taxes due the state have been paid. Inasmuch as, in some instances, a month or more may be consumed in effecting such compliance, it is advisable to investigate and institute dissolution or withdrawal proceedings, wherever possible, well in advance of the close of the year.

NEW YORK—Every corporation taxable under Article 9-A of the Tax Law which, on or after March 31, 1944, ceases to exercise its franchise or to do business in New York, is required to file a separate report setting forth its entire net income for each fiscal or calendar year or part thereof up to the date of cessation of the exercise of its franchise or the doing of business, to the extent that such entire net income has not previously been reported. Such reports are required to be filed by the corporation on the date it ceases to exercise its franchise or to do business, unless an extension is secured, and the tax is payable to the State Tax Commission at the time the reports are required to be filed. The consent of the Tax Commission is required to be secured by every domestic corporation which desires to dissolve or to consolidate with a foreign corporation. (Ruling of State Tax Commission, New York CT, ¶ 200-745.)

UTAH—The Corporation Franchise Tax and the Individual Income Tax Regulations have recently been revised by the State Tax Commission. (Utah CT, pages 1175—1207.)

WYOMING—Out of state firms soliciting business through traveling representatives, either residents or non-residents of Wyoming, are required to collect and remit the use tax on such sales made to residents of Wyoming. (Opinion of Deputy Attorney General to State Board of Equalization, Wyoming CT, ¶ 7949.)

Some Important Matters for October and November

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

DELAWARE—Returns of Withholding at the source due on or before October 31.—Domestic and Foreign Corporations making payments for personal services to Delaware residents and non-residents.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before October 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

LOUISIANA—Franchise Tax Report and Tax due on or before October 1.—Domestic and Foreign Corporations.

MASSACHUSETTS—Second instalment of Excise Tax due on or before October 20.—Domestic and Foreign Corporations.

MINNESOTA—Returns of Withholding at the source due on or before October 15.—Domestic and Foreign Corporations.

NEW YORK—Second instalment of Income Tax of Business Corporations due on or before November 15.—Domestic and Foreign Business Corporations other than real estate companies.

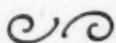
NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before October 20.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Division of Industrial Inspection during October and April.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before October 15.—Domestic and Foreign Corporations.

UNITED STATES—Withholding at source due on or before October 31.—Domestic and Foreign Corporations.

WEST VIRGINIA—Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before October 30.—Domestic and Foreign Corporations.



The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, S, N. Y.

What Constitutes Doing Business. (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Cross Hauling . . . and the Answer, Spot Stocks. Explains how the possible wartime restrictions on cross-hauling point the way to volunteer peacetime economies through the keeping of warehouse stocks at strategic shipping points.

Amendments to Delaware Corporation Law, 1943. Contains complete text of the amendments adopted at the 1943 session of the legislature, giving for each one a brief explanation of its purpose and effect.

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

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When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employee suddenly found themselves in trouble.

What! We Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

Judgment by Default. Gives the gist of *Rarden v. Baker* and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employees as statutory representatives are sometimes left defenseless in personal damage and other suits.

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THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

[While no more binders are at present available, their production will be resumed as soon after the war as possible.]

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